



Delta Counties Coalition

Contra Costa County · Sacramento County · San Joaquin County · Solano County · Yolo County

"Working together on water and Delta issues"

July 29, 2016

The Honorable Estevan Lopez, Commissioner
Bureau of Reclamation
United States Department of the Interior
1849 C Street, NW
Washington, D.C. 20240

Re: Yolo and Solano Counties' Governance Proposal for Biological Opinion Projects

Dear Commissioner Lopez:

This letter requests your consideration of the enclosed document, "The 2008 and 2009 Biological Opinions: Proposal for a Comprehensive Federal, State, and Local Agency Governance Strategy." Yolo and Solano counties prepared the proposal following discussions with various officials and agencies in Washington, D.C. in March 2016.

The fundamental goal of the proposal is to promote dialogue and agreement on the governance of projects undertaken to satisfy the Biological Opinions. As the proposal reflects, we envision a long-term collaboration between agencies on the planning, implementation, and adaptive management of such projects. The proposal describes various elements that we believe are essential to the success of such collaboration: a commitment to shared objectives; an agency leadership council and staff project teams; a consensus-based approach (supported by dispute resolution if needed); and other elements intended to ensure that project implementation occurs in a manner that addresses the interests of agencies at all levels of government. We expect that the proposal, if successfully implemented with your assistance, will create a longstanding model of cooperation between agencies on complex habitat restoration and similar projects.

We are distributing this proposal to a number of different officials and agencies, as reflected in the list of those copied herein. The Delta Counties Coalition reviewed this proposal, and we endorse the principles articulated in the proposal for projects not only in Yolo and Solano counties, but also in Contra Costa, Sacramento, and San Joaquin counties when projects are undertaken in those counties to satisfy the 2008, 2009, and any future Biological

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The Honorable Estevan Lopez

July 29, 2016

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Opinions. We look forward to discussing this proposal with you (or other appropriate members of your agency leadership) at your earliest convenience.

Very truly yours,



Mary Nejedly Piepho
Supervisor, Contra Costa County



Skip Thomson
Supervisor, Solano County



Don Nottoli
Supervisor, Sacramento County



Jim Provenza
Supervisor, Yolo County



Chuck Winn
Supervisor, San Joaquin County

Enclosures

cc: The Honorable Sally Jewell, Secretary, U.S. Department of the Interior
Tom Iseman, Deputy Assistant Secretary for Water & Science, U.S. Dept. of the Interior
Tim Male, Council on Environmental Quality
Joel Beauvais, U.S. Environmental Protection Agency
John Watts, Office of Senator Feinstein
Maria Rea, National Marine Fisheries Service
Dan Castleberry, U.S. Fish and Wildlife Service
DCC Federal Delegation
Governor Jerry Brown
Secretary John Laird
Charlton Bonham, CA Department of Fish and Wildlife
E. Joaquin Esquivel, CA Natural Resources Agency
DCC State Delegation
Kris Tjernell, CA Natural Resources Agency
David Okita, CA Natural Resources Agency-EcoRestore
Byron Buck, State and Federal Contractors Water Agency
Campbell Ingram, Delta Conservancy
Randy Fiorini, Delta Stewardship Council
Jessica Law, Delta Stewardship Council

**THE 2008 AND 2009 BIOLOGICAL OPINIONS: PROPOSAL FOR A COMPREHENSIVE
FEDERAL, STATE, AND LOCAL AGENCY GOVERNANCE STRATEGY**

Prepared by Yolo and Solano Counties—April 2016

SUMMARY. Biological opinions covering Central Valley Project and State Water Project operations require a wide range of habitat restoration and other projects in the Delta, including within Yolo and Solano Counties. Successful planning and implementation (including adaptive management) of these projects requires *a long-term collaboration between federal, state, and local agencies*, as well as local landowners and other stakeholders. Such collaboration occurs between agencies through the recently-convened Yolo Bypass Partnership, but Yolo and Solano Counties maintain that *a more robust governance strategy is vital to collaboration and success over time*.

STRATEGY ELEMENTS. An appropriate governance strategy addressing projects arising from the biological opinions—including post-construction adaptive management efforts that may expand a project's footprint or otherwise affect land uses and activities—would include several key elements:

- **Commitment to shared objectives.** As recognized in the Yolo Bypass Partnership MOU (attached), the participating agencies identify and describe defined objectives that will be achieved through *collaboration toward balanced outcomes*. This includes outcomes that satisfy the biological opinions, maintain and improve existing land uses—*particularly local agricultural operations and the Yolo Wildlife Area*—and mitigate any environmental and economic impacts.
- **Collaborative agency leadership and staff forums.** Effective governance of project planning, environmental review, and implementation requires *oversight and direction by a council or other leadership team* consisting of participating agencies representatives. An inclusive approach is also essential among staff at federal, state, and local levels. The agency leading a particular project should assure *frequent participation by staff from other agencies*—e.g., through multiagency staff project teams—on significant ongoing tasks.
- **Consensus-based planning, environmental review, and adaptive management.** The agency leadership team must achieve *consensus on major actions*, with full participation by all levels of government in decisionmaking. Such actions include approval of a defined program of projects to implement each biological opinion in the Yolo and Solano County region, any material changes to an approved program, and recommendations to a lead agency on the adequacy of environmental review documents. A consensus-based approach *may also be appropriate for other decisions that may cause significant environmental or economic effects* within the affected region.
- **Robust, objective scientific and technical support.** Through agency technical teams, outside consultant support, and peer review when appropriate, *all significant decisions shall have a sound scientific and technical foundation* that addresses uncertainties and incorporates prudent adaptive management strategies. Such strategies may include protocols for adjusting projects over time, as uncertainties diminish.
- **Meaningful dispute resolution.** Recognizing the retained, nondelegable authority of participating agencies (below), *dispute resolution shall be available when the agency leadership cannot achieve a consensus vote on a major action*. Dispute resolution should also be available in other appropriate situations, such as where significant differences of opinion exist between agency leadership on an important issue.
- **Funding for local agency participation.** Through an annual work plan and budget or other acceptable means, *sufficient funding for local agency participation* should be provided from available funding sources, including sources relied upon by state and federal agencies to support their participation.

- **Preservation of existing agency rights and responsibilities.** The participating federal, state, and local agencies each possess legal responsibilities that cannot be waived or delegated. Any governance structure *must account for the need to avoid an unauthorized delegation of authority* and, at the same time, maximize the available means of assuring *meaningful collaboration between the participants*.



Yolo Bypass & Cache Slough MOU

MEMORANDUM OF UNDERSTANDING

AMONG THE UNITED STATES DEPARTMENT OF INTERIOR BUREAU OF RECLAMATION, UNITED STATES FISH AND WILDLIFE SERVICE, UNITED STATES DEPARTMENT OF COMMERCE NATIONAL MARINE FISHERIES SERVICE, UNITED STATES ARMY CORPS OF ENGINEERS, THE CALIFORNIA NATURAL RESOURCES AGENCY, CALIFORNIA DEPARTMENT OF WATER RESOURCES, CALIFORNIA DEPARTMENT OF FISH AND WILDLIFE, CENTRAL VALLEY FLOOD PROTECTION BOARD, STATE WATER RESOURCES CONTROL BOARD, CENTRAL VALLEY REGIONAL WATER QUALITY CONTROL BOARD, COUNTY OF YOLO, COUNTY OF SOLANO, SACRAMENTO AREA FLOOD CONTROL AGENCY, SOLANO COUNTY WATER AGENCY, AND RECLAMATION DISTRICT NO. 2068

REGARDING COLLABORATION AND COOPERATION IN THE YOLO BYPASS AND CACHE SLOUGH REGION

Introduction

The Yolo Bypass and Cache Slough Region (Region) is the focus of several interagency planning efforts by multiple federal, state, and local governmental agencies aimed at improving flood conveyance, fisheries and wildlife habitat, water supply and water quality, agricultural land preservation, economic development, and recreation. The numerous demands on and interests in the Region present an opportunity for governmental agencies at the local, state, and federal levels to collaborate to accommodate multiple objectives through the implementation of policies and projects that improve the variety of public values that the Region serves.

Purpose

This Memorandum of Understanding (MOU) serves as the vehicle to promote the discussion, prioritization, and resolution of policy and other issues critical to the success of the various planning efforts in the Region. The parties (Parties) to this MOU envision a Region that serves as a model for public agency cooperation and achievement. To this end, this MOU memorializes the understanding of the Parties, interested local, state, and federal agencies, to partner to improve collaboration, synchronize efforts, and enhance outcomes of planning efforts related to flood conveyance, fisheries and wildlife habitat, water supply and water quality, agricultural land preservation, economic development, and recreation.

Parties

This MOU is entered into by the United States Department of the Interior Bureau of Reclamation, the United States Fish and Wildlife Service, the United States Department of Commerce National Marine Fisheries Service, the United States Army Corps of Engineers, the California Natural Resources Agency, the California Department of Water Resources, the California Department of Fish and Wildlife, the Central Valley Flood Protection Board, the State Water Resources Control Board, the Central Valley Regional Water Quality Control Board, the County of Yolo, the County of Solano, Sacramento Area Flood Control Agency, Reclamation District No. 2068, and Solano County Water Agency (collectively referred to as "Parties" and individually as "Party").

Principles

The Parties recognize the following principles, which will guide collaborative efforts under this MOU:

- A. Successful planning understands and addresses the specific concerns of each Party and those that they represent, such as concerns related to potential species, regional economy, and water supply conflicts, among others.
- B. Public benefit projects will protect or improve the flood system resiliency of the Yolo Bypass, which is an authorized State and Federal flood management facility.
- C. Public benefits are inherent in the integration of flood management, habitat restoration, and economic sustainability efforts, and these public benefits should be maximized wherever appropriate.
- D. Each Party is committed to understanding the opportunities and constraints of one another's independent authorities and regulatory responsibilities, which will not be compromised through participation in the collaborative efforts described in this MOU.
- E. Local expertise and technical input is valuable and should be actively sought out through effective stakeholder outreach.

Term and Other Conditions

A. Non-binding Nature:

This MOU is legally nonbinding and in no way: (i) impairs any Party from continuing its own planning or project implementation; (ii) limits a Party from exercising its regulatory authority in any matter; (iii) infers that a Party's governing body or management will act in any particular manner on a project; or (iv) gives any of the Parties any authority over matters within the jurisdiction of any other Party. Nothing in this MOU creates any legal rights, obligations, benefits, or trust responsibilities, substantive or procedural, enforceable at law or in equity, by a Party against any other Party, a Party's officers, or any person.

B. Term:

This MOU will become effective upon signature of all Parties and shall remain in effect for ten years unless terminated by mutual agreement of the Parties. Upon the expiration of ten years, the MOU may be renewed or extended through written agreement of all Parties. A Party may withdraw from this MOU at any time by notifying all other Parties in writing.

C. Amendments:

Modifications or amendments to the terms of this MOU shall be in writing and executed by all Parties.

D. Relationship of Parties:

Execution of this MOU does not create a new legal entity with a separate existence from the individual Parties. This MOU does not create an "advisory committee" as that term is defined in the Federal Advisory Committee Act, as amended (Pub. L. 92-463). This MOU also does not result in the joint exercise of powers as set forth in California Government Code section 6500 et seq. This MOU neither expands nor is in derogation of those powers and authorities vested in the Parties, or any of them, by applicable laws, statutes, regulations, or Executive Orders, nor does it modify or supersede any other applicable interagency agreements existing as of the date of this MOU.

E. Funding and Availability of Funds:

Funding by any Party toward any interagency effort in the Region is subject to the requirements of any and all applicable laws, regulations, and procedures. Nothing in this MOU is intended or shall be construed to authorize or require the obligation, appropriation, reprogramming, or expenditure of any funds by any Party as permitted by applicable law. As required by the Anti-Deficiency Act, 31 U.S.C. 1341, 1342, and 1517, all commitments made by Federal signatories to this MOU are subject to the availability of appropriated funds and budget priorities. Any funding commitment or services, if pursued, will be handled in accordance with applicable laws, regulations, and procedures.

Signatures

United States Department of the Interior Bureau of Reclamation

By: Pablo R. Arroyave
Printed Name and Title: Pablo R. Arroyave Deputy Regional Director
Date: May 2, 2016

United States Department of Commerce National Marine Fisheries Service

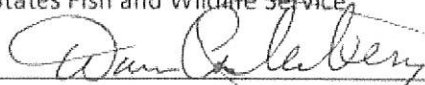
By: Maria Rea
Printed Name and Title: Maria Rea for Will Stelle, Regional Administrator,
Date: 4/29/16 West Coast Region NOAA Fisheries

United States Army Corps of Engineers


By: Michael J. Farrell
Printed Name and Title: COL MICHAEL J. FARRELL
Date: 5/3/2016

United States Fish and Wildlife Service


Acting

By: 
Printed Name and Title: Dan Castleberry
Date: 2 May 2016

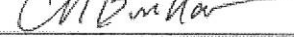
The California Natural Resources Agency

By: 
Printed Name and Title: John Lind, Secretary, CA Natural Resources Agency
Date: May 3, 2016


California Department of Water Resources

By: 
Printed Name and Title: Mack W. Cowin, Director, Dept of Water Resources
Date: May 6, 2016


California Department of Fish and Wildlife

By: 
Printed Name and Title: Chon H. Bonham
Date: May 2, 2016

Central Valley Flood Protection Board

By: 
Printed Name and Title: William H. Edgar, President CVFPB
Date: May 4, 2016

State Water Resources Control Board

By: 
Printed Name and Title: Thomas Howard
Date: May 6, 2016

Central Valley Regional Water Quality Control Board

By:

Printed Name and Title: Pamela Creedon, Executive officer

Date:

5/4/16

County of Yolo

By:

Printed Name and Title: Jim Provenza, Chair

Date:

May 4, 2016

County of Solano

By:

Printed Name and Title: Bill Emlen

Date:

5/4/2016

Sacramento Area Flood Control Agency

By:

Printed Name and Title: Richard Johnson, EXECUTIVE DIRECTOR

Date:

29 APRIL 2016

Solano County Water Agency

By:

Printed Name and Title: SKIP THOMSON

Date:

May 4, 2016

Reclamation District No. 2068

By:

Printed Name and Title: T. M. Hardesty

Date:

May 3, 2016